

TOWN OF TIVERTON
PLANNING BOARD OF APPEALS
MINUTES

October 5, 2016

The following petition was received and heard by the Tiverton Planning Board of Review on Wednesday, October 5, 2016 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairwoman Lise Gescheidt, David Collins, John Jackson, Wendy Taylor Humphrey, and George Alzaibak.

Also present were: Anthony DeSisto, Town Solicitor, Peter Skwirz, Assistant Town Solicitor, Neil Hall, Building Official, and Barbara Montijo, Court Reporter.

Representing James J. McInnis were: Kerin L. Browning, Thomas A. Moses, and Stephen A. Izzi, Moses Afonso Ryan, Ltd.

1. James J. McInnis, remanded appeal of the decision of Administrative Officer Christopher Spencer regarding development application for Map 1-2, Block 92, Lot 9 known currently as Plat 110 Lot 102 (continued from September 7, 2016)

This matter is before the Board on remand from Superior Court regarding whether a pre-application meeting was required/mandated; whether it was had, whether there were exceptions; if it is a statutory requirement.

Attorney DeSisto raised two housekeeping issues: 1) An issue was raised as to whether Chairwoman Gescheidt could sit in on this hearing or recuse, since there are only five members as opposed to having alternates. Judge Stone heard the matter and ruled that the legal doctrine is the rule of necessity; there was no objection by the appellant's attorneys to Chairwoman Gescheidt sitting as a member. 2) marked as an exhibit were certified copies from the Town Council with the minutes showing the date that the zone was changed. There was no objection from the appellants.

Attorney Moses objected to the Board accepting public comment for this hearing.

Town's Exhibits:

1. Certified Copy of the Town Council Minutes
2. Keeper of the Record deposition of Matt Wojciak
3. Checklist for a Pre-application meeting.

Appellant's Exhibits:

1. Curriculum Vitae of Joe Lombardo
2. Memorandum of counsel with attached exhibits
3. Deposition of Christopher Spencer
4. Deposition of Jay Lambert
5. Deposition of James Goncalo
6. Deposition of Noel Berg
7. Deposition of Kate Michaud
8. Deposition of Andrew Teitz

Public Comment: Patricia Hilton, Bernard Giroux, Patty Cooper Sousa, and Louise Durfee.

Attorney Browning stated the 5/6/2008 rejection letter was erroneous. There was no such requirement that could not have been fulfilled in accordance with the regulations after the certificate of completeness was issued.

Attorney Browning requested that the decision that rejected the 2008 application for the lack of a pre-application meeting be overturned; that it was improper, it was prejudicial procedural error and lacks support by the weight of the evidence.

Attorney Browning stated Mr. Spencer's decision was erroneously issued due to pressure he received from town officials and does not comport with the weight of the evidence and requests that the Board overturn the decision and order that a certificate of completeness issue for the application filed on 3/24/2008.

Attorney Moses stated that there are two standards that have to be looked at; a standard for a certificate of completion versus a standard to meet all of the meeting requirements.

Attorney Moses stated the applicant filled out a Planning Board application cover sheet. The Board inquired whether the applicant filled out the checklist for a pre-application. Attorney Moses stated, "It appears that he did not. We have not found that."

The Board questioned why Mr. Lombardo's deposition was not taken when it was known he would not be appearing in person at this hearing. Attorney Browning stated after conferring with the Town's counsel, it was agreed that an affidavit would be submitted.

The Board questioned what was it that brought this matter back before the Board. Attorney Moses stated the decision of the Superior Court; that there was an order from Superior Court to have a hearing and the town never posted a hearing to have this appeal.

Attorney Moses stated the language in both the development regulations and the statute refers to a pre-application and informal concept review; that they're almost interchangeable in the way they're written. Attorney Moses referenced Section 23-13 and RIGL 45-23-35(c); the Board referenced RIGL 45-23-35(a) and 45-23-35(e).

The Board questioned whether Chris Spencer's signed affidavit were his own words or had been drafted by an attorney of his behalf. Attorney Moses stated he did not know. The Board cited page 79 of the Spencer deposition.

Ms. Hilton discussed Mr. Lambert's deposition and also read from a copy of Deb Pallasch's remarks from the 2/27/2012 Town Council meeting. Attorney Moses objected to Ms. Hilton's testimony.

Mr. Giroux is the real estate broker for the McInnis property. Mr. Giroux stated he had communicated and met with either Kate Michaud or Chris Spencer on three occasions before the plans were submitted.

Ms. Cooper Sousa inquired whether this appeal was timely, as appeals have to be filed 20 days after the decision. Attorney DeSisto stated the town asked Superior Court for instructions as to whether it was timely and the decision by Judge Stone was yes.

Ms. Durfee read an excerpt from the Town Council October of 2005 meeting.

Mr. Collins made a motion to uphold the decision of the administrative officer, Christopher Spencer, in rejecting the application as premature for a major development on the grounds that a pre-application meeting was not held in accordance with Rhode Island Law and also the comments and observations made by the members of the Board as findings of fact; seconded by Mr. Alzaibak. The Vote was unanimous. Voting were Ms. Gescheidt, Ms. Taylor Humphrey, Mr. Collins, Ms. Jackson and Mr. Alzaibak.

PBR: BMM